

(2010) 02 MAD CK 0048
In the Madras High Court
Case No : Second Appeal No. 501 of 2003

P. Rajamani Gurukal	Vs	APPELLANT
T.V.V.P.P. Thirumaligai Sizyal Trust		RESPONDENT

Date of Decision : 25-02-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10
Transfer of Property Act, 1882 — Section 106, 109, 52, 8

Citation : AIR 2010 Mad 197 : (2011) 2 CivCC 348 : (2011) 2 RCR(Civil) 52 : (2011) 2 RCR(Civil) 52

Hon'ble Judges : M. Duraiswamy, J

Bench : Single Bench

Advocate : S. Prabhakaran, for M.V. Venkataseshan, for the Appellant; Sujatha Rangarajan, for the Respondent

Final Decision : Dismissed

Judgement

M. Duraiswamy, J.—The above Second Appeal arises against the judgment and decree in A.S. No. 27 of 2002 on the file of the Principal

Sub Court, Myladuthurai, confirming the Judgment and Decree in O.S. No. 192 of 1998 on the file of the District Munsif Court, Sirkazhi.

2. The defendant, in the suit is the appellant in the above second appeal and the respondents are the plaintiffs in the suit.

3. The plaintiffs filed the suit in O.S. No. 192 of 1998 on the file of the District Munsif Court, Sirkazhi, for recovery of possession, arrears of rent and damages for use and occupation.

4. The brief case of the plaintiffs in the suit are as follows:

(i) According to the plaintiffs, the suit property is a house property. The said property originally belonged to one Srinivasaachariar, the father of the

first plaintiff. On the death of the said Srinivasaachariar on 27.12.1994, the first plaintiff became solely entitled to the suit property.

Srinivasaachariar had inducted the defendant as a tenant of the suit property in the year 1988 on a monthly rent of Rs. 50/-. After the death of

Srinivasaachariar, the defendant attorned the tenancy in favour of the plaintiff and he was paying rent from 01.01.1995. The defendant paid rent

upto August, 1996 thereafter he has not paid the rent.

(ii) The first plaintiff wanted to dispose of the suit property as the defendant did not afford a fair price, the first defendant entered into an agreement

of sale with the second plaintiff, on 12.09.1996 in respect of the suit property. The defendant was duly intimated about the said agreement and he

was called upon to vacate the house. The defendant was bargaining for time to vacate. Subsequently, the defendant instituted a suit for specific

performance in O.S. No. 70 of 1997 on the file of Sub Court, Myladuthurai against the first plaintiff, her son, the second plaintiff, and the Sub

Registrar, Poombukar. The defendant filed a suit based on the alleged oral agreement of sale between him and the first plaintiff on 25.08.1996.

The suit was dismissed on merits on 27.04.1998.

(iii) On 09.11.1997, the first plaintiff issued a notice to the defendant u/s 106 of Transfer of Property Act terminating the tenancy by the end of the

month and calling upon him to pay the arrears of rent from September, 1996. On 17.01.1998, the defendant sent a reply notice, wherein he took a

stand that he has been in possession of the suit property after 25.08.1996 pursuant to the oral agreement of the sale and that he is not bound to

pay any rent or damages as claimed.

(iv) After the disposal of O.S. No. 70 of 1997, the first plaintiff had conveyed the suit property to the second plaintiff by the registered sale deed

dated 15.05.1998. The second plaintiff is also arrayed as the second plaintiff in the suit to avoid unnecessary contentions therefore they jointly filed

the suit.

5. The brief case of the defendant is as follows:

(i) According to the defendant, the first plaintiff settled in Bangalore and that she offered to sell the suit property to him. The defendant also spent

huge amount for repairing the house property. On 25.08.1996, the first plaintiff orally agreed to sell the suit property to the defendant. From

September, 1996 the defendant is in possession of the property as agreement holder. After the dismissal of O.S. No. 70 of 1997, the defendant had filed appeal in A.S. No. 140 of 1998 on the file of first Additional District Court, Nagapattinam. The sale deed executed in favour of the second plaintiff on 15.05.1998 is not valid in view of Section 52 of the Transfer of Property Act.

(ii) According to the defendant, the first plaintiff has not sold the property to the second plaintiff on 15.05.1998, therefore the second plaintiff has

no right to file the present suit. The defendant cannot be considered as a tenant u/s 109 of the Transfer of Property Act. Further the defendant

cannot be considered as a tenant under the first plaintiff or under the second plaintiff. A notice issued by the first plaintiff on 09.11.1997 is not a valid notice. Therefore, the defendant prayed for dismissal of the suit.

6. Before the trial court, on the side the plaintiffs, PW1 was examined and 6 documents, Ex.A-1 to Ex.A-6 were marked and on the side of the defendant, the defendant was examined as DW1, Ex.B-1 was marked.

7. The trial court after taking into consideration, the oral and documentary evidences of both the parties, decreed the suit.

8. Aggrieved over the judgment and decree of the trial court, the defendant preferred appeal in A.S. No. 27 of 2002 on the file of Principal Sub

Court, Myladuthurai and the lower appellate court also after taking into consideration the materials available on record, confirmed the judgment and decree of the trial court and dismissed the appeal.

9. Aggrieved over the judgments and decrees of the courts below, the defendant has filed the above second appeal.

10. Heard Mr. S. Prabhakaran, learned Counsel appearing for the appellant and Mrs. Sujatha Rangarajan, learned Counsel for the respondents.

11. At the time of admission of the above Second Appeal, the following substantial questions of law arose for consideration:

1. Whether the courts below are right in decreeing the suit when the lis for specific performance has not reached a finality and when the appellant has clearly proved the agreement of sale dated 25.08.1996 by Ex.A1 to A6 filed in that suit i.e. O.S. No. 70 of 1997 and when the appellant was always ready and willing to perform the agreement and when the present suit is hit by Section 10 of C.P.C.?

2. Whether the Courts below are right in decreeing the suit when the notice sent is not valid and not in due compliance with Section 106 of the

Transfer of Property Act?

3. Whether the Court below are right in concluding that the benefits accrued under the notice dated 09.11.1997 issued by the first respondent will

pass on to the second respondent as per Section 109 of the Transfer of Property Act when the same is not legally Correct?

12. Learned Counsel appearing for the appellant submitted that the notice u/s 106 of the Transfer of Property Act issued by the first

respondent/first plaintiff is not valid, since the suit property was sold under Ex.A.1 dated 15.05.1998 to the second respondent/second plaintiff;

that the suit filed on 17.11.1998 based on Ex.A5 notice dated 09.11.1997 is liable to be dismissed, since the second respondent/second plaintiff

did not issue any notice u/s 106 of the Transfer of property Act for terminating the tenancy and the suit is liable to be dismissed on the ground of

misjoinder; and that the Judgments and Decrees of the Courts is liable to be set aside on the ground that the respondents failed to enter into the

witness box to prove their case.

13. Learned Counsel for the appellant in support of his contention, relied upon a Judgment reported in AIR 1953 Mys 62 (vol.49, C.N. 32) (M.

Gurumurthappa v. M. Chickmunisamappa), wherein it is held that notice by original landlord to tenant after he parts with his rights and sells

property to another, the said notice cannot have any legal effect or bind latter in any way.

14. Countering the submissions made by the learned Counsel for the appellant, learned Counsel for the respondents submitted that in view of

Section 109 of the Transfer of property Act, notice issued by the first respondent under Ex.A.5 is perfectly valid in law.

15. Learned Counsel appearing for the appellant also relied upon a Judgment reported in Ram Tahal Modi Vs. Ratan Lal, , wherein it is held as

follows:

7. Although under the Transfer of Property Act (the T.P.Act), the transferee acquires all the rights of his transferor, in view of the proviso to

Section 109 of the T.P. Act the transferee ipso facto is not entitled to arrears of rent accrued before the transfer. Section 8 of the T.P. Act

provides that on transfer, the transferee is entitled to the rents and profits thereof accruing after the transfer.

16. The learned Counsel for respondent in support of her contentions, relied upon a Judgment reported in AIR 1991 SCC 14 (Vasantkumar

Radhakisan Vora v. The Board of Trustees of the Port of Bombay). In the said decision the apex Court held that the right to evict the tenant

acquired by the erstwhile Board of Trustees acquired by giving notice to vacate enured for the benefit of the successor of Board of Trustees.

Therefore, the suit for delivery of possession filed by the Successor Board was competent. When the right, title and interest in immovable property

stands transferred the spirit behind Section 109 purports would apply and successor in interest would be entitled to the rights of the predecessor.

17. On a careful consideration of the materials available on record and the submissions made by both the learned Counsels, it could be seen that

under Ex.A.1 sale deed dated 15.05.1998, the first respondent/first plaintiff sold the suit property to the second respondent/second plaintiff. Under

Ex.A.2, Judgment dated 27.04.1998 in O.S. No. 70 of 1997, it could be seen that the appellant had filed the suit against the respondents herein,

for specific performance based on oral agreement dated 25.08.1996 and the said suit was dismissed on 27.04.1998. Against the Judgment and

Decree in O.S. No. 70 of 1997, the appellant preferred appeal in A.S. No. 140 of 1998 on the file of Additional District Court, Nagapattinam

and the said appeal was also dismissed. After the dismissal of the suit in O.S. No. 70 of 1997, the first respondent sold the suit property to the

second respondent under Ex.A.1 sale deed dated 15.05.1998.

18. Thereafter, the first respondent issued Ex.A.5 notice dated 09.11.1997 u/s 106 of the Transfer of Property Act, terminating the tenancy and

calling upon the appellant to hand over the vacant possession. Based on the said notice the respondents filed the suit on 17.11.1998.

19. The legal issue arising for consideration in this second Appeal is with regard to Ex.A.5, notice dated 09.11.1997. Since subsequent to the

issuance of notice, the first respondent sold the suit property to the second respondent, the learned Counsel for the appellant contended that the

said notice is a invalid one.

20. According to the learned Counsel appearing for the appellant, since the first

respondent had sold the property to the second respondent, the second respondent should have issued notice u/s 106 of the Transfer of Property Act terminating the tenancy of the appellant. According to the learned Counsel, the first respondent have no subsisting right to file the suit.

21. The provisions of Section 106 of the Transfer of Property Act clearly demonstrates that a lease of immovable property is terminable by giving 15 day's notice or as per the terms of the contract of lease. On expiry of the period, from the date of receipt of notice the lease shall stand terminated. Undoubtedly, by issuance of notice to vacate automatically the right created thereunder, namely, cessation of the lease and it does not become effective until the period prescribed in the notice or in the statute is expired. On expiry thereof, the lease becomes inoperative and the lessor has the right to have the tenant vacated. When he fails to deliver vacant possession, the lessor would be entitled to have the tenant evicted and possession taken under due process of law.

22. The next question that has to be decided is whether the successor in interest acquires these rights and the rights acquired by lessor would enure for his benefits is the crucial question. The lessor's right on transfer of immovable property including the leasehold rights is transferred to the transferee, on the sale of the property. In the absence of contract to the contrary, the transferor shall possess all the rights and if the lessee so elects, be subject to all the liabilities of the lessor as to the property or the part thereof so long as he is the owner of it.

23. Section 109 of the Transfer of Property Act contemplates transfer of lessor's right inter vivos. But, when right, title and interest in immovable property stand transferred, the spirit behind Section 109 per force would apply and successor in interest would be entitled to the rights of the predecessor.

24. In the case on hand, the first respondent issued a notice u/s 106 of the Transfer of Property Act, to terminate the tenancy on 09.11.1997. The first respondent sold the suit property to the second respondent on 15.05.1998 and they filed the suit on 17.11.1998. The decision reported in

AIR 1991 SCC 14 (Vasantkumar Radhakisan Vora and The Board of Trustees of the Port of Bombay) apply to the facts and circumstances of

the present case. Therefore, applying the principles laid down by the Apex Court

in the said Judgments, I am of the view that the suit was filed by the respondents based on Ex.A.5 notice dated 09.11.1997 issued by the first respondent is perfectly correct.

25. The learned Counsel appearing for the appellant submitted that the plaintiffs were not examined in the suit therefore, the same is fatal to the suit.

In the present case it is not in dispute that the appellant is in possession of the property; that the first respondent sold the suit property to the

second respondent under Ex.A.1 sale deed dated 15.05.1998; that Ex.A.5 notice u/s 106 of the Transfer of Property Act was issued on

09.11.1997 and that the suit was filed on 17.11.1998. With regard to the disputed facts regarding the oral agreement dated 25.08.1996, the

appellant had already filed a separate suit in O.S. No. 70 of 1997 and there is no necessity for going into the merits of the same in the present

case.

26. The appellant also admitted in his written statement that he became a tenant in respect of the suit property under the first respondent's father

Srinivasaachariar on a monthly rent of Rs. 50/- in the year 1988. Since these are all the admitted facts, there is no necessity for the

respondents/plaintiffs to prove any other disputed facts other than that are stated above. In these circumstances, the examination of P.W.1, who is

the sister-in-law of the first respondent/first plaintiff, is sufficient to prove the case. She being well acquainted with the facts of the case, her oral

evidence on behalf of the respondents/plaintiffs is sufficient. Hence P.W.1 is a competent witness. It is also settled principle of law that admitted

facts need not be proved. Therefore, no onus was cast upon the respondents/plaintiffs that would entitle the Court to draw adverse inference

against the respondents for the non-examination of the plaintiffs. Therefore, in the facts and circumstances of the present case, non-examination of

the plaintiffs shall not affect their case in any way and the same cannot have any bearing on the case.

27. In view of the Judgment reported in AIR 1991 SCC 14 (Vasantkumar Radhakisan Vora and The Board of Trustees of the Port of Bombay)

the Judgments relied upon by the learned Counsel for the appellant are not applicable to the case on hand. Therefore, both the courts below have

rightly decreed the suit.

28. In these circumstances, I find no ground much less any substantial question of law to interfere with the concurrent findings of the courts below.

The above second appeal is liable to be dismissed. Accordingly, the above Second Appeal is dismissed. However, there shall be no order as to

costs. The Appellant is granted three months time to vacate the suit property.